# United States Court of Appeals

District of Columbia Circuit



#### DOCKETING STATEMENT

**EEE 16 2002** 

Administrative Agency Review Proceedings (To be completed by appellant/petitioner)

CENERAL COUNSEL OF COPYMISM

CASE NO. $02-$	1244		2. DATE DOC	KETED Augus	st 7, 2002	
CASE NAME (lead parties only)	IOMedia Part	ners, Inc	v. Lik	rarian of Co	ngress (Copy	right Office)
TYPE OF CASE:	[] Review	[X] Appeal	[] Enforcement	[] Complaint	[] Tax Court	
IS THIS CASE RE	QUIRED BY STAT	UTE TO BE E	XPEDITED? YES		NOX ,	
If YES, cite statute	:					
CASE INFORMAT	TION:		•			
a. Identify agency	whose order is to be	reviewed:	Librarian of	Congress		· · · · · · · · · · · · · · · · · · ·
b. Give agency do	cket or order number	(s): 67 F	ed. Reg. 4524	0		
c. Give date(s) of	order(s): July	8, 2002				•
d. Has a request for If so, when was Has the agency	or rehearing or reconstit filed?acted? YES	sideration been By NO	a filed at the agency whom? If so,	YESwhen?	_ NO _ X	
YES X AOL v. Libr AFTRA v. Li Intercolled f. Are any other c Court which involve YES X See 6e	NO (02-124) brarian (02-124) brarian (02-14) viate Broadcas ases, to counsel's known substantially the sa	If YES, ident 5), RIAA 248), Sal ting Syst owledge, pend me issues as th If YES, give	tify case name(s), do v. Librarian em Communicat ems v. Librar ing before the agent ne instant case prese case name(s) and no	ions Corp vian (02–1246), and (02–1246), ions Corp vian (02–1220), this Court, anothers?	nd court(s): AFMUS v, Libr Librarian Court, court, courts asses and identify co	carian (02-1247) (02-1249) or the Supreme ourt/agency:
dispute resolution?	YES	the issues in X	this case through ar	oitration, mediation the name of the pro-	n, or any other alter ogram and the dates	native for s of
	, , ,					
onature	H. 5	Hand)		Date _		
-	.IOMedia Part	ners, Inc	. and all oth	er appellant	s in 02-1244	(as originally
me of Counsel for A	Appellant/Petitioner (	Print) Bar	ry H. Gottfri	ed Firm_	Shaw Pittman	LLP filed) '
	•		•			
one (202) 663	-8000			Fax No(20	02) 663-8007	
	CASE NO.  CASE NAME (lead parties only)  TYPE OF CASE:  IS THIS CASE RE  If YES, cite statute CASE INFORMA  a. Identify agency b. Give agency do c. Give date(s) of d. Has a request for If so, when was Has the agency e. Are any other concepts APTRA v. Li Intercollect f. Are any other concepts Court which involve YES X See 6e g. Have the parties dispute resolution? participation.  gnature  me of Party (Print) me of Counsel for A Washingt	CASE NAME (lead parties only)  TYPE OF CASE: [] Review  IS THIS CASE REQUIRED BY STAT  If YES, cite statute:  CASE INFORMATION:  a. Identify agency whose order is to be b. Give agency docket or order number c. Give date(s) of order(s): July  d. Has a request for rehearing or recons If so, when was it filed?  Has the agency acted? YES  e. Are any other cases involving the sat YES X NO AOL v. Librarian (02-124 AFTRA v. Librarian (02-124 AFTRA v. Librarian (02-124 Intercollegiate Broadcas f. Are any other cases, to counsel's known of Court which involve substantially the sat YES X NO See 6e g. Have the parties attempted to resolve dispute resolution? YES participation.  TOMECLA Part  me of Counsel for Appellant/Petitioner ( dress 2300 N Street, N.W. Washington, DC 20037	CASE NAME (lead parties only)  TYPE OF CASE: [] Review [X] Appeal  IS THIS CASE REQUIRED BY STATUTE TO BE E  If YES, cite statute:  CASE INFORMATION:  a. Identify agency whose order is to be reviewed: b. Give agency docket or order number(s): c. Give date(s) of order(s): July 8, 2002  d. Has a request for rehearing or reconsideration beer If so, when was it filed? Has the agency acted? YES  NO e. Are any other cases involving the same underlying YES  X  NO  Librarian (02-1245), RIAA AFTRA V. Librarian (02-1248), Sal  Intercollegiate Broadcasting Syst f. Are any other cases, to counsel's knowledge, pend Court which involve substantially the same issues as th YES  NO  If YES, give  See 6e g. Have the parties attempted to resolve the issues in dispute resolution? YES  participation.  The of Counsel for Appellant/Petitioner (Print)  Bar dress  2300 N Street, N.W.  Washington, DC  20037-1128	CASE NAME (lead parties only)  IOMedia Partners, Inc. v. Lib TYPE OF CASE: [] Review MAppeal [] Enforcement IS THIS CASE REQUIRED BY STATUTE TO BE EXPEDITED? YES If YES, cite statute:  CASE INFORMATION:  a. Identify agency whose order is to be reviewed:  b. Give agency docket or order number(s):  c. Give date(s) of order(s):  July 8, 2002  d. Has a request for rehearing or reconsideration been filed at the agency if so, when was it filed?  Has the agency acted? YES  NO  If YES, identify case name(s), do AOL v. Librarian (02-1245), RIAA v. Librarian (APTRA v. Librarian (02-1245), RIAA v. Librarian f. Are any other cases, to counsel's knowledge, pending before the agency of the count which involve substantially the same issues as the instant case prese YES  NO  If YES, give case name(s) and make the parties attempted to resolve the issues in this case through and dispute resolution? YES  NO  If YES, give case name(s) and make the parties attempted to resolve the issues in this case through and inspection of the participation.  If yes NO  See 6e  g. Have the parties attempted to resolve the issues in this case through and inspect of the participation.  If yes NO  Mashington, DC  20037-1128	CASE NAME (lead parties only)  IOMedia Partners, Inc. v. Librarian of Co TYPE OF CASE: [] Review MAppeal [] Enforcement [] Complaint IS THIS CASE REQUIRED BY STATUTE TO BE EXPEDITED? YES  If YES, cite statute:  CASE INFORMATION:  a. Identify agency whose order is to be reviewed:  b. Give agency docket or order number(s):  c. Give date(s) of order(s):  If yes, when was it filed?  Has a request for rehearing or reconsideration been filed at the agency? YES  If so, when was it filed?  Has the agency acted? YES  NO  If YES, identify case name(s), docket number(s), and an accommunications Corp. The account of the properties of the same issues as the instant case presents?  YES  NO  If YES, give case name(s) and number(s) of these cases for counsel's knowledge, pending before the agency, this Court, another cases in counsel's knowledge, pending before the agency, this Court, another cases in counsel's knowledge, pending before the agency, this Court, another cases in this case through arbitration, mediation dispute resolution? YES  NO  If YES, give case name(s) and number(s) of these cases 6e  g. Have the parties attempted to resolve the issues in this case through arbitration, mediation dispute resolution? YES  NO  NO  If yes, or the case in this case through arbitration, mediation which involve substantially the same issues in this case through arbitration, mediation for the parties attempted to resolve the issues in this case through arbitration, mediation in the properties of the pro	CASE NAME (lead parties only)  TYPE OF CASE: [] Review [] Appeal [] Enforcement [] Complaint [] Tax Court IS THIS CASE REQUIRED BY STATUTE TO BE EXPEDITED? YES NO X  If YES, cite statute:  CASE INFORMATION:  a. Identify agency whose order is to be reviewed: b. Give agency docket or order number(s):  67 Fed. Reg. 45240  c. Give date(s) of order(s):  July 8, 2002  d. Has a request for rehearing or reconsideration been filed at the agency? YES NO X  If so, when was it filed?  By whom?  Has the agency acted? YES NO If YES, identify case name(s), docket number(s), and court(s):  AOIL V. Librarian (02-1245), RIAA V. Librarian (02-1246), AFMUS V. Librarian (102-1246), AFMUS V. Librarian (102-1246), AFMUS V. Librarian (102-1248), Salem Communications Corp. V. Librarian (102-1246), Salem Communic

#### ATTACH A CERTIFICATE OF SERVICE

Note: If counsel for any other party believes that the information submitted is inaccurate or incomplete, counsel may so advise the Clerk within 10 days by letter, with copies to all other parties, specifically referring to the challenged statement. An original and three copies of such letter should be submitted.

## CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of September, 2002, the foregoing Docketing

Statement was served by U.S. mail, postage prepaid, on the following:

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Barry H. Gottfried

# UNITED STATES COURT OF APPEALS RECEIVED FOR THE DISTRICT OF COLUMBIA CIRCUIT

	DEC 16 2002
IOMEDIA PARTNERS, INC., et al.,	GENERAL COUNSEL OF COPYRIGHT
Appellants,	)
v.	<ul> <li>No. 02-1244 (Consolidated with Nos.</li> <li>02-1245, 02-1246, 02-1247, 02-1248,</li> <li>and 02-1249)</li> </ul>
UNITED STATES COPYRIGHT OFFICE,	)
LIBRARY OF CONGRESS,	
Appellee.	) ) )

### NON-BINDING STATEMENT OF THE ISSUES

Pursuant to the Court's Order of August 9, 2002, the Appellants, IOMedia Partners, Inc., Beethoven.com LLC, Chatmaster Streaming Network, ClassicalMusicDetroit.com, Digitally Imported Radio, Flaresound, iM Networks, Inetprogramming Incorporated, Internet Radio Hawaii, Internet Radio, Inc., Live365.com, Inc., Pacific Internet Broadcast Services, Radio Paradise, SomaFM, LLC, Ultimate-80s, Virgin Audio Holdings, LLC, Wherever Radio, Wolf FM, 3WK, Inc., ("Appellants") presently expect all or many of the following issues to be raised in the above-captioned matter:

- (1) Whether Section 114(f) of the Copyright Act, 17 U.S.C. § 114, violates the First Amendment to the U.S. Constitution by discriminating against eligible non-subscription services as against other statutory licensees.
- (2) Whether the Librarian of Congress (Copyright Office) (the "Librarian") acted in an arbitrary manner in setting the rates and terms for two compulsory licenses that permit certain digital performances of sound recordings and the making of

ephemeral recordings in the Determination of Reasonable Rates and Terms for the Digital Performance of Sound Recordings and Ephemeral Recordings; Final Rule, 67 Fed. Reg. 45240 (July 8, 2002) (to be codified at 37 C.F.R. pt. 261) ("Final Order").

- Whether the Final Order violated the First and Fifth Amendments to the U.S.Constitution by setting confiscatory rates for the Appellants.
- (4) Whether the proceeding and Final Order violated the Regulatory Flexibility Act of 1980, as amended, 5 U.S.C. § 501 et seq., by making it virtually impossible for small businesses to participate effectively.
- (5) Whether the Librarian violated the Constitution and statutes of the United States by excluding, in practical effect, participation in the proceeding by many of the Appellants that are bound by the prescribed rates.
- (6) Whether the rates determined for the Appellants were unsupported by substantial evidence, especially given that the record contained virtually no evidence concerning many of the Appellants, and the evidence adduced did not support the rates adopted.
- (7) Whether the Librarian acted in an arbitrary manner and contrary to law in determining the rates prescribed for the Appellants which are confiscatory and utterly disproportionate to their ability to pay by adopting rates that were contrary to the intent of Congress as reflected in the statutory standard.
- (8) Whether the Librarian acted contrary to Congressional intent by setting confiscatory rates that are utterly disproportionate to small webcasters' ability to pay.

(9) Whether the prescription of the interim method of estimation of rates payable for the period October 28, 1998 through December 31, 2002, was arbitrary in calling for data that was generally unavailable to the Appellants.

DATED: September 9, 2002

Respectfully submitted,

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Counsel for Appellants

Document #: 1270944 v.1

### **CERTIFICATE OF SERVICE**

I hereby certify that on this 9th day of September, 2002, the foregoing Non-Binding

Statement of the Issues was served by U.S. mail, postage prepaid, on the following:

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Copyright Office
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